

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

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CONSERVATION LAW)
FOUNDATION, INC.,) Case No. 1:16-cv-11950-MLW
)
Plaintiff,)
)
v.)
)
EXXONMOBIL CORPORATION,)
EXXONMOBIL OIL CORPORATION, and)
EXXONMOBIL PIPELINE COMPANY,)
)
Defendants.)
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY’S
MOTION TO QUASH SUBPOENA**

The United States Environmental Protection Agency (“EPA”), on behalf of its employee, Ms. Thelma Murphy, moves in accordance with Fed. R. Civ. P. 45(d)(3), to quash a subpoena served by ExxonMobil Corporation, ExxonMobil Oil Corporation, and ExxonMobil Pipeline Company that commands the appearance of Ms. Murphy for testimony at a hearing scheduled for May 14, 2019. Neither the United States nor any of its agencies are parties to this case. As a result, Ms. Murphy must obtain EPA authorization to testify at the hearing. EPA determined, in accordance with its regulations, that compliance with the subpoena would not clearly be in the interests of EPA and does not authorize Ms. Murphy’s testimony at the hearing.

EPA’s determination binds Ms. Murphy and this Court does not have authority to compel Ms. Murphy’s testimony.

Even if ExxonMobil seeks judicial review under the Administrative Procedure Act (“APA”) of EPA’s determination not to allow Ms. Murphy to testify, that determination is not

arbitrary and capricious. The subpoena presents an undue burden to Ms. Murphy and EPA. The testimony of Ms. Murphy will be cumulative and duplicative of information EPA previously provided the parties, and the benefit of this duplicative testimony is outweighed by the burden posed by allowing private litigants to subpoena government employees for testimony in private litigation.

EPA respectfully directs the Court to EPA's Memorandum in Support of the Motion to Quash and supporting declarations, which are being contemporaneously filed.

REQUEST FOR ORAL ARGUMENT

If the Court believes a hearing would be helpful to resolve this motion, EPA looks forward to presenting oral argument.

Respectfully submitted this 18th day of April 2019.

JONATHAN D. BRIGHTBILL
Principle Deputy Asst. Attorney General

/s/ Alan D. Greenberg
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Certification in Accordance with Local Rule 7.1(A)(2)

I hereby certify that counsel for EPA conferred with counsel for ExxonMobil on April 17, 2019, regarding the relief requested in this motion, and have attempted in good faith to resolve or narrow the issues, but have been unable to do so.

/s/ Alan D. Greenberg

Alan D. Greenberg
Attorney for the U.S. Environmental Protection
Agency and Ms. Thelma Murphy

Certificate of Service

I hereby certify that, on April 18, 2019, a copy of the foregoing UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO QUASH was electronically transmitted to the Court using the CM/ECF System and will be sent electronically to registered counsel as identified on the Notice of Electronic Filing.

/s/ Alan D. Greenberg

Alan D. Greenberg
Attorney for the U.S. Environmental Protection
Agency and Ms. Thelma Murphy